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In the

Supreme Court of the United States

No. 637

UNITED STATES OF AMERICA,
Respondent

v.

WILLIAM LAWRENCE LEMONS
AND GRADY INGRAM,
Petitioners

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

R. R. RYDER
168 Belt Boulevard
Richmond 24, Virginia
Counsel for Petitioners

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

The defendants, William Lawrence Lemons and Grady Ingram, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINION BELOW

On December 16, 1961, the petitioners were adjudged guilty of a charge of conspiracy under Title 18, Section 371, to violate Sections 7206(4); 5204(a)(2); 5604(a)(1) of Title 26 of the United States Code, and were sentenced to the custody of the Attorney General of the United States. From this judgment of conviction the petitioners appealed

to the United States Court of Appeals for the Fourth Circuit. The opinion and judgment of the United States Court of Appeals for the Fourth Circuit was entered on October 5, 1962, upholding the decision of the United States District Court for the Middle District of North Carolina at Greensboro.

JURISDICTION

The decision of the United States Court of Appeals for the Fourth Circuit was entered on October 5, 1962. The statutory basis for attempting to invoke the jurisdiction of this court is Title 28, Section 1254, United States Code.

QUESTIONS PRESENTED

The questions presented are:

1. Whether or not the decision of the United States Court of Appeals upholding the decision of the District Court deprived the petitioners of their constitutional rights and;

2. Whether or not there was sufficient evidence for the petitioners to have been convicted in the United States District Court, which conviction was upheld by the Court of Appeals.

REASONS FOR GRANTING THE WRIT

The judgment of the Court of Appeals upholding the judgment of the District Court is based upon a misconstruction of the evidence introduced in the District Court; and erroneous and unwarranted inferences drawn from the evidence. The Court's Opinion of October 5, 1962, at page 2 states that "The evidence also discloses that a number of

vehicles were to use the vernacular, 'souped up' for their use in the illegal activities of the conspirators." Among other details, Cadillac and Lincoln engines had been installed in Fords or other cars of comparable weight, as well as built-up springs, lifting blocks, and cut-off switches which permitted the driver to cut off the tail lights independently of the front lights of the vehicle, thereby flusterating any police officers who might be in pursuit. On page 3 of its opinion the Court then recites that the Defendant Lemons was in the business of service and repairing of motor vehicles and that he had "a widespread reputation for his ability to install high-speed motors, heavy duty springs and cut-off switches on motor vehicles." This recitation of the evidence is erroneous and infers that the defendant Lemons was in the business of installing "souped-up" motors, etc., on vehicles for use by the other conspirators in this case. The evidence of the government failed completely to show that the defendant Lemons in any manner did any work of such a nature upon vehicles owned or operated by the other conspirators, the only evidence being Lemons' denial that he had done such work. There was no admission by Lemons that he had a "widespread reputation for his ability to install high-speed motors, heavy duty springs and cut-off switches on motor vehicles."

The Court on page 4 of its opinion states that "Prospective customers for contraband whiskey were advised that they could contact the defendants by calling Lemons' garage." The transcript of the evidence at page 13 and page 21 disclosed that one of the defendants told a prospective customer that he would be at Lemons' garage at 4:00 o'clock on a specific day and that he could be reached by telephone at that time on that date by calling Lemons' garage. This evidence does not permit the inference drawn by the Court

of Appeals. There was no testimony that any "defendants" could be contacted there, merely that one defendant could be contacted there at a specific time and date.

The Court states at page 6 of its opinion "On this evidence the jury was justified in finding that Lemons' activities went far beyond the mere rendering of innocent services to the other conspirators." The evidence to support this assertion is that Lemons purchased a 1955 Mercury automobile and that subsequently other defendants on numerous occasions operated the Mercury automobile.

The defendant testified in explanation of this use by other defendants that he had sold the vehicle to one of the defendants. The evidence did not show that this vehicle was ever used for the transportation of any illegal whiskey or for any other illegal use.

That Lemons towed a 1959 Ford automobile away from Yanceyville, North Carolina, to a garage in Draper, North Carolina. This vehicle theretofore had been driven by another defendant when he attempted to evade officers who sought to arrest him for a previous liquor violation. A Cadillac motor, heavy duty springs and other unusual equipment was found to have been installed in this vehicle.

The evidence established that as a part of his lawful business activities, Lemons towed disabled vehicles into his place of business and repaired them. No evidence was introduced which in any way connected Lemons with the installation of the Cadillac motor in this vehicle, or the installation of any other unusual equipment on this vehicle. The only evidence on this point being that he denied installing any of the unusual equipment on the vehicle.

That Lemons introduced another defendant to an insurance agent who issued insurance upon a truck which truck was later used to transport illegal whiskey.

The evidence further established that Lemons was well acquainted with the Insurance Agent, that the Insurance Agent recommended business to Lemons and that Lemons recommended business to the Insurance Agent. There was no evidence that Lemons knew of or was in any way connected with the subsequent illegal use to which the vehicle was put.

That a number of the other defendants, on frequent occasions, were seen around Lemons' garage; that certain other defendants made telephone calls to and from Lemons' garage and that on a number of occasions vehicles connected with other defendants were parked at Lemons' garage.

Evidence also established that Lemons was the owner and operator of the largest garage in Draper, North Carolina. He was in the business of repairing automobiles and trucks. He did a large part of the physical labor involved and was reputedly the best mechanic in the area and worked long hours in the garage. During the course of his business he repaired automobiles for anyone who brought the vehicle to him, including agents of the Alcohol and Tobacco Tax Division, the Federal Bureau of Investigation and various other Police Officials. No evidence was introduced showing that he put any unusual equipment upon the vehicles connected to the other defendants in this case. The major portion of his business some 70% or 80% over the last two years, consisted of repairing and keeping operating vehicles of two large legitimate business establishments in and around Draper, North Carolina. The telephone used by some of the defendants was a coin-operated public telephone and the defendant's place of business was open to the public.

The Government's theory as to Lemons and the evidence, if it does anything, places Lemons in the same category of a person being in a legitimate business supplying materials

such as sugar to persons with knowledge that the sugar would be used illegally.

In order for the evidence to be sufficient to uphold the conviction of Lemons, the Government had to show beyond a reasonable doubt that he knew of the existence of the conspiracy and that he acted with this knowledge in aid of the conspiracy. *Call* v. *U. S.* (4th Cir.), 265 F. 2d 167. The *Call* case recognizing the rule enunciated in *U. S.* v. *Falcone*, 109 F. 2d 579. In the *Falcone* case, the Falcone brothers and the Noles brothers sold large quantities of sugar, yeast, and five-gallon cans to manufacturers of illegal whiskey. These sales were made with knowledge that the purchaser would use the goods in the manufacture of illegal whiskey. One of the Noles brothers hid behind the name of a cousin and caused the cousin to swear falsely that he was doing the business of the Acme Yeast Company. The decision, in an opinion by Judge Learned Hand held that sellers of goods not themselves innocent, do not become a conspirator because the seller knows that the buyer means to use the goods to commit a crime. "It is not enough (to convict) that he does not forego a normally lawful activity of the fruits of which he knows that others will make an unlawful use, he must in some sense promote the venture himself, make it his own, have a stake in its outcome."

Here, while it was the Government's theory as before stated that Lemons fixed automobiles to be used as "liquor cars," no evidence was ever introduced showing that he placed any unusual equipment on the vehicles used by other defendants. Also, while it was another part of the Government's theory that Lemons furnished automobiles for use by the other defendants, no evidence was introduced that he did furnish cars with the exception of the 1955 Mercury which was never used to transport illegal whiskey. This is

a classic example to the danger inherent in a conspiracy prosecution. This danger recognized by Judge Hand in the *Falcone* case, and by the Fourth Circuit in the *Call* case, is guilt by association. The evidence in this case shows that Lemons was a respectable businessman, pursuing his lawful business activity. His crime, if any, was that he did not discriminate as to his customers. The evidence completely failed to establish beyond a reasonable doubt that Lemons did anything other than follow his usual affairs of business. The very worst that the evidence could be said to show as to Lemons, is that he did not forego a normally lawful activity, the fruits of which he knew the other defendants would make an unlawful use.

It is respectfully submitted that the Circuit Court's opinion as to Lemons upheld a verdict based upon the "speculative possibility" that Lemons "acted with knowledge in aid of the conspiracy," *Call* v. *U. S.*, *supra*, the conviction and judgment as to Lemons should be reversed.

As to the petitioner Ingram, the evidence, with one exception, discussed hereinafter, consisted of his being seen in the presence of some of the other defendants on a number of occasions; at the home of one of the defendants on a number of occasions; in a public restaurant with two of the other defendants; in a truck and automobile with one of the other defendants; and that an automobile registered to his wife, which he drove on frequent occasions, was seen on a number of occasions at the home of another defendant; at a service station where other defendants were present and at the garage of the defendant, William Lawrence Lemons.

The other exception consisted of a conversation by Ingram with an undercover Alcohol and Tobacco Tax Agent. This conversation took place on October 16, 1960, and consisted of Ingram's conversation about the price of illegal whiskey and the offer to sell illegal whiskey or brandy to the agent.

The brandy was to be delivered by another defendant. No delivery was made. This conversation does not disclose that Ingram conspired with the other defendants named in the indictment with the possible exception of the defendant, Roy Webb. At best the conversation could be construed as evidence of a conspiracy between Ingram and Webb, which conspiracy was not carried into effect.

At page 7 of its opinion the Court states that "On another occasion he (Defendant Ingram) was observed taking a large sum of money from some of the other conspirators." It is difficult to understand this assertion. The reporter's transcript contains no testimony that the defendant Ingram was ever seen taking any money from any of the other conspirators in this case.

No evidence was ever introduced by the Government which explained the meetings between Ingram and other defendants. Unexplained meetings between Ingram and other defendants raises no inference of Ingram's guilt. *Dennert* v. *U. S.*, 147 F. (2d) 286.

At most, the Government's evidence disclosed that Ingram was acquainted with and associated with some of the other defendants. It further established that Ingram had knowledge of illegal whiskey and was perhaps involved in some manner with illegal whiskey. Such a showing falls far short of evidence establishing guilt beyond a reasonable doubt of the charge contained in the indictment. As to the charge contained in the indictment, it is respectfully submitted that the evidence created a suspicion of guilt which is not sufficient. *Moore* v. *U. S.*, 271 F. 2d 564.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be granted in order to protect the petitioners' individual rights and to correct the erroneous decision of the District Court and the Circuit Court which was based upon insufficient evidence.

Respectfully submitted.

R. R. RYDER
108 Belt Boulevard
Richmond 24, Virginia
Counsel for Petitioners

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 8537

UNITED STATES OF AMERICA,

Appellee,

v.

WILLIAM LAWRENCE LEMONS
and GRADY INGRAM,

Appellants.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA, AT GREENSBORO. EDWIN M. STANLEY, DISTRICT JUDGE.

(Argued March 29, 1961 Decided October 5, 1962)

Before SOPER and BOREMAN, Circuit Judges, and FIELDS, District Judge.

R. R. Ryder (Martin & Ryder on brief) for Appellants, and William H. Murdock, United States Attorney (R. Roy Mitchell, Jr., Assistant United States Attorney; Henry C. Stockell, Jr., Regional Counsel; William P. Crewe, Assistant Regional Counsel; and Eugene B. Smith, Attorney, Internal Revenue Service, Atlanta, Georgia, on brief), for Appellee.

FIELD, District Judge:

William Lawrence Lemons and Grady Ingram, together with Lloyd Coy Webb, Roy Lauren Webb, Marshall Gates Martin, Thomas Lee Carter, Arnold Anderson Handy, Vandal Plummer Shrively and Winford Watlington, were indicted for conspiracy to violate the Internal Revenue Laws of the United States, namely, to unlawfully remove and conceal distilled spirits with the intent to evade and defeat the assessment and collection of tax thereon[1] and to unlawfully and wilfully transport, possess, buy, sell and transfer distilled spirits in containers which failed to have the appropriate revenue stamps thereon.[2] The indictment was returned in the Middle Judicial District of North Carolina and alleged 22 overt acts in that Judicial District as well as the Eastern District of North Carolina, the Western District of North Carolina and the Western District of Virginia. All of the nine defendants were convicted upon the jury's verdict, and the appellants, William Lawrence Lemons and Grady Ingram have appealed their conviction.

It would be almost impossible and would serve no useful purpose to detail all of the evidence relative to the operations of this extensive whiskey ring, but it clearly establishes the existence of the criminal conspiracy charged in the indictment. The evidence discloses a not unfamiliar pattern involving the use of a variety of secondhand motor vehicles, fictitious vehicle registrations and the indiscriminate transfer of license plates from one vehicle to the other. The evidence also discloses that a number of vehicles were, to use the vernacular, "souped up" for their use in the illegal activities of the conspirators. Among other details, Cadillac and Lincoln engines had been installed in Fords or other

[1] 26 U.S.C. §7206(4).

[2] 26 U.S.C. §§5205(a)(2) and 5604(a)(1).

cars of comparable weight, as well as built-up springs, lifting blocks, and cut-off switches which permitted the driver to cut off the taillights independently of the front lights of the vehicle, thereby frustrating any police officers who might be in pursuit.

The primary contention of the appellant Lemons is to the effect that at most the evidence does no more than place him in the position of one who performed services innocent in themselves, upon vehicles of parties whom he might know intended to use such vehicles in criminal activities. From this he argues that his conviction should be reversed upon the principle set forth in the landmark case of *United States v. Falcone*, 109 F. 2d 579 (2d Cir. 1940). However, a review of the evidence relative to Lemons' activities fails to place him in such a favorable posture. We might observe at this point that upon the argument of this case, counsel for appellant vigorously challenged the accuracy of a number of references to the evidence set forth in the Government's brief. Accordingly, we have carefully reviewed the entire record and transcript with respect to the activities of the appellant in this case.

This review of the evidence shows that Lemons operated a business in Draper, North Carolina, for the service and repair of motor vehicles, the business being conducted under the name of W. L. Lemons' Garage. Admittedly, he was an expert mechanic and had a widespread reputation for his ability to install high-speed motors, heavy-duty springs and cut-off switches on motor vehicles. Draper is located some 20 miles from Danville, Virginia, which was the home of defendant Lloyd Coy Webb. Ferrum, Virginia, is some 70 miles from Danville and was the home of the defendant Grady Ingram. Providence, North Carolina, the home of Roy Lauren Webb, is seven miles from Danville. The

defendant Marshall Gates Martin lived in Martinsville, Virginia, which is 35 miles from Danville. The defendant Thomas Lee Carter lived in Kentuck 15 miles from Danville. The defendant Vandall Plummer Shrively lived in Axton, Virginia, which was 25 miles west of Danville. In spite of the somewhat extensive geographical area covered by the residences of the defendants, for some period of time, including the period covered by the indictment, the evidence shows that they regularly, severally or in groups, frequented the garage of the appellant Lemons at Draper. He performed work on vehicles either owned or driven by them and on a number of occasions these vehicles were parked either at his garage or at his residence. Prospective customers for contraband whiskey were advised that they could contact the defendants by calling Lemons' garage. It is true that the telephone at the garage was a public telephone, but it was shown in the evidence that a large number of calls emanating from this phone were directed to the homes of the various conspirators.

A 1955 Mercury automobile registered in the name of W. L. Lemons' Garage was used almost constantly by the defendants Handy and Lloyd Coy Webb for a considerable length of time. Title to this automobile had been transferred to Lemons by Esther Huffine Griffin on June 23, 1959. Mrs. Griffin testified that she was a lifelong friend of Lemons and that she had originally taken title to the car in her name on behalf of her son. She testified this was done because her son was under age although she also testified that her son never drove the car. She further stated that Lemons had possession and use of the car prior to the time title was transferred to him. Lemons' explanation of the use of the car by Handy and Webb was that he had sold the car to Handy in March of 1961. However, no evidence of any transfer of title was introduced by the defendant and he was unable to state that title had ever been transferred. On

August 26, 1961, this vehicle was delivered to Johnson Chevrolet, Inc., also of Draper, as a trade-in on a 1956 Ford which was purchased by the defendant Lloyd Coy Webb.

The evidence shows that on one occasion in March, 1961, Lemons accompanied the defendant Arnold Anderson Handy to the insurance office of O. L. Cherry to obtain liability insurance on a 1959 Chevrolet dump truck. This truck was later seized while transporting illicit whiskey in the vicinity of Creedmore, North Carolina.

On November 23, 1960, the defendant Marshall Gates Martin was arrested while driving a 1959 Ford automobile which was equipped with a high-speed motor, built-up rear springs and a cut-off switch for the rear lights. The defendant Roy Lauren Webb posted bond for Martin, and Lemons was called to pick up the car at Yanceyville, North Carolina, and take it to Draper. Title to this vehicle was registered to Lloyd Coy Webb in the State of Virginia and to Walter Thomas Barksdale in the State of North Carolina. This vehicle was later observed parked at Lemons' residence although, in the meantime, it had been used and driven by some of the conspirators.

Another vehicle which appeared prominently in the evidence was a 1961 Ford which was registered in the name of Marcella Ingram, wife of the appellant Grady Ingram. The certificate of title to this vehicle disclosed a lien in favor of the appellant Lemons. This automobile was frequently driven by Lloyd Coy Webb and on a number of occasions was parked at his home in Danville. In May of 1961, this Ford was parked at Lemons' garage and an unidentified man carried a car seat from inside the garage and placed it in the Ford. It was testified that this car seat was later found at the home of Thomas Lee Carter, together with four other automobile seats which were used to conceal illicit liquor.

On this evidence the jury was justified in finding that Lemons' activities went far beyond the mere rendering of innocent services to the other conspirators. It certainly was reasonable for the jury to infer that the conduct of Lemons demonstrated an interest in seeing that the illegal operation prospered and continued, and that it would avoid detection. See *United States* v. *Piampiano*, 271 F. 2d 273 (2nd Cir. 1959); *Call* v. *United States* 265 F. 2d 167 (4th Cir. 1959). We are of the opinion that unquestionably the evidence of Lemons' activities was sufficient to prove his participation in the conspiracy. "A conspiracy is properly thought of as a partnership in criminal purposes, * * *; and those who, with knowledge that such partnership exists, aid or assist in carrying out its criminal purposes make themselves parties thereto and are equally guilty with the original conspirators." *Orton* v. *United States*, 221 F. 2d 632 (4th Cir. 1955).

Lemons saw fit to take the stand in his own behalf. A review of his testimony indicates that as a witness he was evasive, equivocal and contradictory. The jury had an opportunity to observe him on the witness stand and to weigh his testimony along with the other evidence in the case. Upon this evidence the jury made a determination of his guilt. This determination was supported by substantial evidence and in our opinion should be sustained by this Court. As was stated in *Glasser* v. *United States*, 315 U. S. 60, at 80:

> "It is not for us to weigh the evidence or to determine the credibility of witnesses. The verdict of a jury must be sustained if there is substantial evidence, taking the view most favorable to the Government, to support it. *United States* v. *Manton*, 107 F. 2d 834, 839, and

cases cited. Participation in a criminal conspiracy need not be proved by direct evidence; a common purpose and plan may be inferred from a 'development and a collocation of circumstan[illegible]'".

With respect to the appellant Ingram, in addition to the use of the Ford vehicle registered in the name of his wife to which we have heretofore adverted with respect to Lemons, the record is replete with instances of Ingram's association with the other conspirators. While association in itself is not sufficient to convict a man of conspiracy, the activities of Ingram, like those of Lemons, go far beyond the limits of mere association. On at least one occasion he discussed the sale of illicit liquor with an undercover agent of the Government, and a few days thereafter the defendant Roy Webb contacted the agent relative to the subject matter of this discussion. On another occasion he was observed taking a large sum of money from some of the other conspirators. Taking the evidence in its entirety we are of the opinion that the verdict of the jury with respect to Ingram was well warranted. "Ordinarily conspiracies can be established only by the acts and conduct of the conspirators and the inferences to be drawn therefrom. * * * Generally, convictions will be sustained if the circumstances, acts and conduct of the parties are of such character that the minds of reasonable men may conclude therefrom that an unlawful agreement exists." *Jones* v. *United States*, 251 F. 2d 288 (10th Cir. 1958); *Simpson* v. *United States*, 11 F. 2d 591 (4th Cir. 1926).

In our opinion the verdict against Ingram represented a well-founded conclusion of reasonable men and his conviction as well as that of Lemons should be affirmed.

Affirmed.

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No. 687

In the Supreme Court of the United States

October Term, 1962

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United States of America

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In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 637

WILLIAM LAWRENCE LEMONS AND GRADY INGRAM, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 1–7; R. 6–13) is reported at 309 F. 2d 168.

JURISDICTION

The judgment of the court of appeals was entered on October 5, 1962 (R. 14). By order of November 5, 1962, the Chief Justice extended the time for filing a petition for a writ of certiorari to and including December 5, 1962, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

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QUESTION PRESENTED

Whether the evidence was sufficient to support the convictions of petitioners for conspiracy to violate the internal revenue laws relating to the concealment and transportation of illicit liquor.

STATEMENT

Petitioners Lemons and Ingram, together with seven other defendants and various co-conspirators, were charged in an indictment returned in the United States District Court for the Middle District of North Carolina with a conspiracy to violate internal revenue laws [26 U.S.C. 7206(4), 5205(a)(2), and 5604(a)(1)] relating to the unlawful concealment and transportation of distilled spirits (App. 1–6). The jury found all nine defendants guilty (Pet. App. 2). Lemons was sentenced to three years' imprisonment, all but 85 days of which was suspended under 18 U.S.C. 3651, and a $1,500 fine. Ingram was sentenced to imprisonment for four years and a $1,500 fine (R. 2, 3). On appeal, the convictions were affirmed (R. 2, 14).

Evidence adduced at the trial, so far as pertinent to these petitioners, may be summarized as follows:

Petitioner Lemons operated the W. L. Lemons Garage for automobile repairs at Draper, North Carolina (Tr. 390, 519, 520).[1] Lemons, an excellent mechanic, had a reputation for installing high-speed motors, heavy duty springs and cut-off switches (Tr. 31, 139, 470, 528, 533, 567). Lemons worked on ve-

[1] "Tr." refers to the transcript of the trial testimony, a copy of which we are filing with the Clerk of this Court.

hicles either owned or driven by other defendants, and on a number of occasions these vehicles were parked at his garage (Tr. 331, 362, 379, 564). Lemons' garage had a public telephone from which calls were directed to homes of various conspirators (Pet. App. 4; Tr. 3–P, 3–Q). During the period covered by the indictment, defendant Handy made a number of long distance telephone calls to Lemons' garage (Tr. 198, 200–201).

During September and October, 1960, Alcohol and Tobacco Tax Investigator Brown, working "undercover," was employed by one Willie Rakes, Jr., to haul illicit whiskey from North Carolina to Virginia (Tr. 23–25). On October 14, 1960, Brown was with Rakes when Rakes brought to Lemons' garage a 1957 Ford which Rakes said he would like "shocked down" so that he could use it to haul whiskey. Lemons said he would do the work for a fair price, and that Rakes could pay in either cash or liquor. Lemons suggested that he knew a man who could get a bill of sale notarized so that title could be obtained in a false name as had been done on other liquor cars in the past (Tr. 30–32). During the conversation Lemons stated "he had talked to Grady [petitioner Ingram] and the boys, and he understood we were pushing a lot of whiskey; and he said that he knew where we were getting it, and where it was going" (Tr. 33).

On October 16, 1960, Brown went to the home of petitioner Ingram at Ferrum, Virginia to purchase non-taxpaid brandy. Ingram did not have brandy at that time, but offered to sell non-taxpaid whiskey

at $27.00 per case. Ingram promised to obtain brandy the following week; and told Brown he could pay either Ingram or Roy Webb (Tr. 34–35). A few minutes later, Brown observed Ingram talking to two men in a 1956 Ford. One of these men was counting out between $500 and $700 and placing it in Ingram's hands. Ingram told Brown it was collection money for some liquor (Tr. 35–36). Four days later, Roy Webb told Brown that he had talked with Ingram about the brandy order and would make delivery when more brandy was available (Tr. 36–37).

On November 23, 1960, defendant Martin, driving a 1959 Ford equipped with a high-speed motor, built-up rear springs, and a switch to cut off the rear lights, was arrested for speeding and reckless driving. Under the front seat was a 1960 Virginia License tag 530438 which had been issued to defendant Lloyd Webb (Tr. 44–46, 71–73, 255–256, 359). Defendant Roy Webb said that petitioner Lemons would pick up the car, and on November 28 Lemons did so (Tr. 74–75).

On many occasions during the periods covered by the indictment a 1955 Mercury registered to W. L. Lemons Garage (Tr. 48, 159, 273) was observed while in use by Handy and Lloyd Webb or parked at the home of Lloyd Webb (Tr. 49, 50, 273, 275, 276, 277, 280, 281, 299, 303–304, 306, 311, 313, 318, 329, 349). In April 1961, automobile salesman Johnson sold a 1950 Chevrolet to an unknown male who gave the fictitious name of Nelson Williams and was in the company of petitioner Lemons (Tr. 161–

167, 319–322). On April 25, 1961, Handy was observed operating this 1950 Chevrolet in the area of Danville, Virginia, where he was joined by an unknown driver of the Mercury registered to Lemons' garage (Tr. 171–173). On April 26, this 1950 Chevrolet, driven by co-conspirator Sheets, was seized by a state officer and found to be transporting 25 cases of non-taxpaid whiskey (Tr. 193–196).

On the night of April 17, 1961, Alcohol and Tobacco Tax Investigator Bryzana observed petitioner Ingram in the company of Lloyd Webb and Handy. Ingram was driving a 1953 Chevrolet truck owned by Lloyd Webb and Handy was operating the 1955 Mercury registered to Lemons' garage (Tr. 311–316). At various other times, petitioner Ingram was observed in the company of Lloyd Webb and Handy (Tr. 282, 283, 302, 304, 326, 338).

A 1961 Ford was registered in the name of Marcella Ingram, the wife of petitioner Ingram, and the certificate of title showed a $600.00 lien in favor of petitioner Lemons (Tr. 300–301). This automobile was driven by Lloyd Webb, and on many occasions was observed parked in front of his Danville home (Tr. 80, 286, 300, 304, 316, 325–326). On May 23, 1961, when this 1961 Ford was parked at Lemons' garage, an unidentified man took a car seat from the garage and placed the seat in the back of the Ford (Tr. 334–335). This car seat was later found at the home of defendant Carter on June 14, 1961, when four other automobile seats and six gallons of non-taxpaid whiskey were seized (Tr. 336, 55–56, 88).

On October 18, 1961, Lloyd Webb was observed driving a 1950 Ford with North Carolina plates registered to W. L. Lemons Garage. On September 20, 1961, Handy had been observed operating this same vehicle (Tr. 378–379). On October 23, 1961, when petitioner Lemons was arrested, this 1950 Ford was parked at his garage (Tr. 379).

ARGUMENT

The sufficiency of the evidence to support petitioners' convictions presents no issue for review by this Court. The evidence justified the inference that each petitioner was, in his own way, an informed and interested participant in the conspiracy to sell and transport non-taxpaid liquor. See *Direct Sales Co.* v. *United States*, 319 U.S. 703; *Blumenthal* v. *United States*, 332 U.S. 539; *United States* v. *Piampiano*, 271 F. 2d 273 (C.A. 2); *Orton* v. *United States*, 221 F. 2d 632 (C.A. 4), certiorari denied, 350 U.S. 821; *Simpson* v. *United States*, 11 F. 2d 591 (C.A. 4), certiorari denied, 271 U.S. 674.

Petitioner Lemons was not as he claims one who merely performed automobile services, innocent in themselves, for persons who he knew intended to use the vehicles in criminal operations. His activities went well beyond passive acquiescence. His garage was a place from which calls were directed to the homes of the conspirators. Cars used by the conspirators were registered in the name of his garage. That this was knowingly done to assist the conspiracy could be inferred from evidence that Lemons knew about the transportation of illicit whiskey and the procedure of having false names on titles.

As to petitioner Ingram, the evidence shows more than mere association with the other conspirators. Ingram offered to sell non-taxpaid brandy and whiskey to Brown, stating that payment could be either to himself or Webb. Webb later talked with Brown about the brandy, a circumstance indicating that Ingram had communicated with him. The fact that delivery was not made was a factor to be considered by the trier of the facts, but it certainly does not overcome the inference that Ingram was involved. In addition, the 1961 Ford, registered in the name of Ingram's wife and used by the defendants, was parked at Lemons' garage when an unidentified man placed in the Ford a car seat later found at defendant Carter's home when non-taxpaid whiskey was seized. The totality of the circumstances warranted the jury's verdict.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ARCHIBALD COX,
Solicitor General.
HERBERT J. MILLER, JR.,
Assistant Attorney General.
BEATRICE ROSENBERG,
ROBERT G. MAYSACK,
Attorneys.

JANUARY 1963.

U.S. GOVERNMENT PRINTING OFFICE